



Reform Party
Of the United States of America

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2000 Convention Committee



Gerald M. Moan
Chairman and Treasurer

April 6, 2000

Office of General Counsel
Federal Election Commission
999 E. Street
Washington, DC 20463

AOR 2000-06

Re: Advisory Opinion Request of the 2000 Convention Committee of the Reform Party USA,
AOR 2000-_____

Dear Sir or Madam:

The undersigned, as authorized agent of the 2000 Convention Committee of the Reform Party USA, submits this request for an advisory opinion pursuant to 2 U.S.C. Sec. 437(f) and 11 C.F.R. Part 112. The general subject matter of this request is the uses to which funding for presidential nominating conventions (available under 26 U.S.C. Sec. 9008) can be applied by the Reform Party USA in conjunction with its unique nominating process.

BACKGROUND

As a result of its 1996 presidential candidate having received more than five percent of the popular vote in the 1996 general election, the Reform Party achieved minor party status under 11 C.F.R. 9002.7. In AO 1998-2, the Federal Election Commission (hereinafter "Commission") recognized the National Committee of the Reform Party USA as the national committee of a political party under 11 C.F.R. Sec. 100.13. At a convention of the Reform Party USA held in Atlanta, GA in September, 1998, the nominating procedure, which is the subject of this AOR, was adopted. Minor amendments were passed at the 1999 RPUSA convention in Dearborn, MI.

REFORM PARTY USA'S NOMINATING PROCESS

The process consists of two parts: (1) qualifying for the Reform Party's presidential nominating ballot; and (2) the nomination balloting itself. A candidate qualifies by achieving eligibility to run as an independent candidate for President of the United States in enough states in which the Reform Party (or one of its affiliates) has not achieved legal ballot status so that the total electoral votes assigned to the states where the candidate qualifies is equal to at least one half of the total electoral votes of non-ballot status states. The nomination balloting consists of a national vote cast by members of the Reform Party or an affiliated state party and all other persons who signify their desire to participate in a Reform Party (or affiliated) organization in their state along with all persons

who sign a nominating petition for a candidate seeking to qualify. These persons will be placed on a computer database and mailed ballots for an election to be held by telephone, mail and email during the month of July 2000. Each voter may cast a vote for his or her first, second and third choices. The ballots will be tabulated by computer and the results announced at the Reform Party National Convention to be held in August, 2000. If no candidate secures a majority, the computer will generate a second result by eliminating the candidate with the lowest number of votes and distributing the second choice votes of those who voted for the eliminated candidate to the remaining candidates. The procedure continues (using the third choice if necessary) until a candidate receives a majority. The candidate for Vice President is chosen by convention delegates. A copy of the rules codifying this process, as adopted at the 1998 Reform Party convention and amended in 1999 is enclosed. ~~XX~~



QUESTION

Can convention funds available to the Reform Party under 26 U.S. Sec. 9008 be used to finance phase two of the process described above — the development of a voter base and the conduct of the balloting to choose the Reform Party presidential candidate in addition to the organizing and conduct of the August, 2000 meeting?

DISCUSSION

It is respectfully submitted that the regulations governing the nomination of presidential candidates are based on the practices of the two major parties — presidential primaries conducted on a state by state basis to elect delegates to a national convention where the candidate is chosen. See, 11 C.F.R. Parts 9008, 9031-9039. In AO 1975-44 and AO 1984-11, however, the Commission found that candidates who participate in the fundamentally different process by which independent candidates or candidates of minor parties which do not have ballot status in many states qualify for the general election ballot (by a state by state petitioning process), can receive primary matching funds. In AO 1975-44, the Commissioners wrote: "However, in this case, as in the past, the Commission is concerned to construe the provisions of the Act in a manner consistent with the Constitutional requirements, regardless of a candidate's party affiliation or independent status. See AOs 1975-11 (40 FR 42839, September 16, 1975) and 1975-54 (40 FR. 40678. September 3, 1975). The primary election and convention process is a procedure by which major parties typically determine their candidates for the general election. The procedure for presidential candidates of minor parties, however, differs in that most states have a separate petition process whereby such candidate may qualify for the general election ballot. Accordingly, for the purpose of applying the limitations of 18 U.S.C. Sec. 608, the Commission will view the selection process required of the presidential candidates of the minor parties as the equivalent of the primary elections and convention process of the major party candidates.

The Reform Party USA is in the unique position of being the first minor party to qualify for convention funding. However, it still lacks legal ballot status in 31 of the 50 states and, therefore, must seek access to the ballot in those states for its presidential candidate through the petitioning process. Primary elections for the selection of convention delegates cannot be conducted in those states. The nominating process designed by the Reform Party takes into account its unique position. Moreover, it is an attempt to achieve an innovative process which is fair, open, inclusive, democratic, verifiable, specific and feasible. The activity of developing a voter base, distributing

~~XX~~ OGC downloaded and printed these from Reform Party website. They were not enclosed. Content confirmed by e-mail dated 4-17-00.


April 6, 2000

ballots and collecting and tabulating the vote must be funded by the Reform Party itself. The state primaries in which the major parties participate are, in contrast, funded by the states themselves. It is important to note that the actual voting for the Reform Party presidential candidate (the most significant activity of major party conventions) takes place through the process described above. It is not done by the delegates to a convention. 11 CFR Sec. 9008.7 includes as acceptable uses of convention funding expenses such as preparation of a physical site, entertainment, producing biographical films about candidates and other things besides actual voting for the candidate. However, the statute, 26 U.S.C. 9008 is broadly worded, allowing the expenditure of funds to defray the expenses of "a presidential nominating convention." It is respectfully submitted that the Reform Party presidential nominating convention is an ongoing process that consists of all of the activities necessary to compile the voter base and administer the voting for the candidate in addition to planning and conducting the meeting where the results of the balloting are announced. To find otherwise, to confine the use of funds only to the August 2000 meeting where the results of voting which occurred previously is announced, would be to violate the spirit of AO 1975-44 and AO 1984-11 which interpreted the Act and regulations to take into account the differences between major and minor parties. In a very real sense the Reform Party presidential nominating convention is the extended process by which citizen delegates from across the United States cast their ballot to select the Reform Party presidential candidate. The results of that convention balloting are announced at the August, 2000 meeting. The balloting and the meeting together constitute the "presidential nominating convention" funded by the statute.

Sincerely;



Gerald Moan

Vice Chairman, RPUSA

Chairman and Treasurer, 2000 Convention Committee